Negative: Guantanamo Prison Closure

By “Coach Vance” Trefethen

Guantanamo Bay Naval Base is an installation on the coast of Cuba that is leased by the US from the government of Cuba. It was established long ago, before the current communist government took power, by a treaty between the US and Cuba. The Cuban government would have long ago terminated the lease and sent the Americans home, except they can’t. The treaty requires consent by both parties (U.S. government and the Cuban government) to terminate the lease, and the US government will never consent.

The facts above set up what happened in 2001 after the 9/11 terrorist attacks. Pres. George W. Bush was looking for a way to process foreign citizen bad guys captured during various operations related to the “War on Terror” that followed 9/11. Some of the traditional rules (he argued) didn’t apply. There are established procedures for processing prisoners of war under the Geneva Convention. But these guys weren’t legally “prisoners of war” because they weren’t in the employ of any recognized government or army. What were they? Pres. Bush classified them as “enemy combatants” (or sometimes “unlawful enemy combatants”) and used that authorization to do two things. First, it justified indefinite detention for as long as the US felt was needed to keep them from going back and doing more bad things. Second, it justified putting them on trial under “military commissions” instead of the usual trials held in criminal cases in ordinary federal courts. These are also known as “Article III” courts, referring to the section of the Constitution where they are defined. For example, if you robbed a federally insured bank in New York City, you would be prosecuted in a federal Article III court. If you didn’t plea bargain, you would be given a jury trial in front of a federal judge in New York. Military commissions avoid all that and do their work within the military justice system.

And just to be sure that no meddlesome courts or lawyers would try to get in the way, Pres. Bush ordered these detainees to be held in prison facilities at Guantanamo. In other words, “not” (officially, completely) on US soil (so maybe the Constitution doesn’t apply?) and not anywhere that the media or lawyers could get easy access to them. Guantanamo consists entirely of military facilities. There is no tourism or outside visitation allowed unless authorized by the Navy.

Most of the prisoners that have been detained at Guantanamo have either been released or convicted by the military commissions and sent to regular federal prison. But there are a few left that are lingering, never having had a trial and never having been convicted of a crime, yet considered too dangerous to release. The government says they’re working on trials, but the military commission process is terribly slow and inefficient. Indefinite detainment without trial is allegedly a human rights violation (you can dispute that in the Neg evidence below), so AFF might argue that we either need to try them or release them. There are several possible Affirmative plans that could be done here. One is to bring them back to the U.S. and put them on trial in real (Article III) federal courts. If they’re found not guilty, they are cut loose. If guilty, they go to federal prison. Another is to simply release them and send them back to their home countries, under the theory that they are no longer a threat and we’ve delayed their human right to a trial for so long that a fair trial is now impossible.

Some of the issue with Article III trials is the conditions under which these detainees were caught. There is no police investigation, CSI teams collecting forensic evidence, etc. These bad guys were caught overseas in conflict situations and war zones. We may “know” they’re bad guys, but proving it in a law enforcement context might be impossible.

Since we don’t know in advance what AFF’s plan is, you will have to judge after hearing it which NEG evidence here can be used. The Counterplan is not consistent with many of the arguments in the rest of the brief, so you will need to avoid self-contradictory arguments that could damage your Negative position.

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NEGATIVE: Guantanamo Prison Closure

COUNTERPLAN – Reform not reduce [use carefully – may not be consistent with some of the Negative arguments elsewhere in this brief]

Negative will offer a counterplan that denies the resolution and is mutually exclusive to the Affirmative plan

Our Counterplan will be to “Reform” the trials of prisoners at Guantanamo, not close, shut down or reduce the prison. Our Counterplan will rely on keeping the facility open to the same extent that it is now, so you will have to choose clearly between the Affirmative Plan of shutting it down and our Counterplan of keeping it open and reforming it. The Counterplan will also avoid the Disadvantages of the Affirmative’s plan, giving you a clear reason to prefer it.

Our Counterplan is:

1. Congress amends Title 28 Section 112 of the United States Code to convert the military commissions at Guantanamo into an Article III court by assigning it to the jurisdiction of the federal court for the Southern District of New York

2. Prisoners stay at Guantanamo and the prison stays as it is in Status Quo. Judges and juries go to Guantanamo for the trials. Jurors are generously compensated for the extra time and travel involved.

3. Funding is general federal revenues with net reduction in federal spending over Status Quo military commissions.

4. Timeline is the same as the timeline of the Affirmative Plan.

5. All Negative speeches may clarify.

Solvency: Expanding the Southern District of New York Article III court to include Guantanamo would be an effective way to prosecute the prisoners

The New York City Bar Association, Military and Veterans Affairs Committee 2020. (association of attorneys in New York) WHITE PAPER ON CONVERTING GUANTÁNAMO BAY MILITARY COMMISSIONS INTO AN ARTICLE III COURT, May 2020 <https://s3.amazonaws.com/documents.nycbar.org/files/2020668-GuantanamoBayArticleIIICourts.pdf>

Congress may convert the military commissions at Guantánamo into an Article III court by expanding the jurisdiction of an existing district court to encompass the U.S. Naval Base at Guantánamo. The Southern District of New York could be an ideal choice for prosecuting Khalid Sheikh Mohammed and the other 9/11 detainees because it is the site of World Trade Center 9/11 attacks, it has the deepest and most diverse jury pool, it has secured more terrorism-related convictions over the past two decades than nearly all other districts, and had already been preparing to hold the 9/11-related trial before Congress prohibited such trials in 2011.

Advantage 1. Upholds civil rights without harming the legal process

The New York City Bar Association, Military and Veterans Affairs Committee 2020. (association of attorneys in New York) WHITE PAPER ON CONVERTING GUANTÁNAMO BAY MILITARY COMMISSIONS INTO AN ARTICLE III COURT, May 2020 <https://s3.amazonaws.com/documents.nycbar.org/files/2020668-GuantanamoBayArticleIIICourts.pdf>

As noted supra § I.C., trying Guantánamo detainees in an Article III court with Sixth Amendment protections would result in some additional protections for the detainees, such as a requirement for a unanimous verdict and the exclusion of certain hearsay evidence, among other things. As former Attorney General Eric Holder made clear in 2011—after Congress prohibited the transfer of Guantánamo detainees to the U.S. to stand trial in mainland Article III courts— these additional protections would present no obstacle to their successful prosecution.
**END QUOTE. THEY GO ON TO SAY LATER IN THE ARTICLE QUOTE**:
Moreover, a Guantánamo detainee tried in an Article III court would enjoy the right to have compulsory process for obtaining the appearance of witnesses who reside in the United States or are U.S. citizens located abroad. An Article III court could compel the testimony even of other enemy combatants held at Guantánamo.

Advantage 2. Saves time & money. Trials would be 10 years faster and save $400 million/year

The New York City Bar Association, Military and Veterans Affairs Committee 2020. (association of attorneys in New York) WHITE PAPER ON CONVERTING GUANTÁNAMO BAY MILITARY COMMISSIONS INTO AN ARTICLE III COURT, May 2020 <https://s3.amazonaws.com/documents.nycbar.org/files/2020668-GuantanamoBayArticleIIICourts.pdf>

Flying the jury to Guantánamo for jury selection and trial is similar to what already occurs in the existing military commissions—attorneys, non-governmental observers, victims’ family members, and others are regularly flown to Guantánamo on chartered commercial flights for judicial proceedings and housed on base.[**END QUOTE**] Thus, from a purely logistical perspective, flying a jury to Guantánamo for jury selection and trial does not appear to present new barriers to creating an Article III court in place of the existing military commissions, particularly in light of the potential time (and thus cost) savings that using an Article III court could provide. Moreover, hearings at which the defendant has no right to be present could take place on the mainland—for instance, in the Southern District of New York—or by videoconference. We would expect Congress to appropriate funds to address these logistical improvements in any bill incorporating this proposal. **[THEY CONTINUE LATER IN THE CONTEXT QUOTE:]** A jury trial at Guantánamo, however, would place unique burdens on the jurors themselves. As a result, we propose that Congress include in the law establishing the Guantánamo court certain provisions designed to compensate jurors for these burdens. For example, Congress could grant all jury members serving on Guantánamo trials a hardship stipend to compensate them for their time away from home. Congress could also authorize the use of federal funds to cover the cost of visits between jury members and their families, and other diversions the Court deems proper. These expenses (and any aforementioned logistical expenses) would more than offset by the cost savings achieved by using an Article III court—which could shave a decade or more off the time to reach a final verdict, at a savings of approximately $400 million per year.

Backup - Counterplan Solvency: Exact law that would be amended to do the C-Plan

The New York City Bar Association, Military and Veterans Affairs Committee 2020. (association of attorneys in New York) WHITE PAPER ON CONVERTING GUANTÁNAMO BAY MILITARY COMMISSIONS INTO AN ARTICLE III COURT, May 2020 <https://s3.amazonaws.com/documents.nycbar.org/files/2020668-GuantanamoBayArticleIIICourts.pdf>

Specifically, to incorporate Guantánamo into the Southern District of New York, Congress would amend as follows the statute that sets forth the Southern District of New York’s jurisdiction—namely, 28 U.S.C. § 112(b) (proposed amendments in bold and underlined): (b) The Southern District comprises the counties of Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester and concurrently with the Eastern District, the waters within the Eastern District, **and the United States Naval Base, Guantánamo Bay, Cuba**. Court for the Southern District shall be held at New York, White Plains, and in the Middletown-Wallkill area of Orange County or such nearby location as may be deemed appropriate, **and at the United States Naval Base, Guantánamo Bay, Cuba, provided that the Guantánamo location shall hold court for the Southern District solely for the purposes of any proceeding that was brought or otherwise would have been brought under the Military Commissions Act of 2006, as amended by the Military Commissions Act of 2009**.

HARMS / SIGNIFICANCE

1. Nothing wrong with detaining bad guys at Guantanamo

They’re not innocent bystanders, they’re really bad terrorists, and we have every right to detain them

Hans von Spakovsky 2018 (Election Law Reform Initiative and Senior Legal Fellow at Heritage Foundation) 18 July 2018 “Trump Wisely Keeping ‘Really Bad Dudes’ in Guantanamo Bay“ https://www.heritage.org/terrorism/commentary/trump-wisely-keeping-really-bad-dudes-guantanamo-bay

The repeat acts of terrorism by many of these former detainees show just how wrong organizations like Human Rights Watch have been. For years, they have strained to get all of the detainees transferred off the island, waging a propaganda war that paints these terrorists as innocent bystanders, the victims of a cruel and unfeeling U.S. government. In truth, however, those still stuck in Gitmo were stone cold terrorists when we caught them. And we have every reason to believe they’d act as stone cold terrorists again, if anyone was foolish enough to give them an opportunity to do so. Under the law of war, the U.S. has every right to detain them for the duration of hostilities. And the war on terrorism, a war they started, is still far from over.

Supreme Court says they can be detained until the end of conflict in Afghanistan

Steven Groves & Brian Walsh 2007. ([Steven Groves](https://www.heritage.org/about/staff/stevengroves.cfm) is Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies. [Brian W. Walsh](https://www.heritage.org/about/staff/BrianWalsh.cfm) is Senior Legal Research Fellow in the Center for Legal and Judicial Studies, at The Heritage Foundation ) Dispelling Misconceptions: Guantanamo Bay Detainee Procedures Exceed the Requirements of the U.S. Constitution, U.S. Law, and Customary International Law 13 July 2007 <https://www.heritage.org/defense/report/dispelling-misconceptions-guantanamo-bay-detainee-proceduresexceed-the-requirements> (ellipses in original)

The United States is engaged in an ongoing armed conflict in Afghanistan and therefore has no obligation-legal, moral, or otherwise-to release captured enemy soldiers so that they may return to the battlefield. Indeed, the Geneva Conventions require that combatants be released from custody only "after the cessation of active hostilities."  The U.S. Supreme Court recently affirmed the principle that the detention of enemy combatants is a "fundamental and accepted…incident of war" and concluded that the President is therefore authorized to hold detainees for the duration of the conflict in Afghanistan.

2. No civil rights problems with Guantanamo detainees

Oddly enough, because the detainees violated the Geneva Convention, they actually get more rights than they otherwise would

Steven Groves & Brian Walsh 2007. ([Steven Groves](https://www.heritage.org/about/staff/stevengroves.cfm) is Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies. [Brian W. Walsh](https://www.heritage.org/about/staff/BrianWalsh.cfm) is Senior Legal Research Fellow in the Center for Legal and Judicial Studies, at The Heritage Foundation ) Dispelling Misconceptions: Guantanamo Bay Detainee Procedures Exceed the Requirements of the U.S. Constitution, U.S. Law, and Customary International Law 13 July 2007 <https://www.heritage.org/defense/report/dispelling-misconceptions-guantanamo-bay-detainee-proceduresexceed-the-requirements>

There would be little or no doubt whether detainees are members of the Taliban or al-Qaeda if such forces simply followed the Geneva Conventions and wore uniforms, displayed insignias, and carried their arms openly. The resulting irony is that unlawful enemy combatants detained at Guantanamo Bay have been given heightened due process despite, and as a direct result of, their repudiation of the laws of war.

Just silly: Legal claims by Guantanamo detainees are like an injured burglar suing the homeowner

Robin Simcox 2019. (specializes in terrorism and national security analysis as the Margaret Thatcher Fellow at the Heritage Foundation) The Terrorist As Litigant 16 Sept 2019 https://www.heritage.org/terrorism/commentary/the-terrorist-litigant

We have read the stories. A burglar [breaks](https://www.thedailybeast.com/burglar-sues-man-who-shot-him-im-lucky-to-be-alive) into someone’s property, injures [himself](https://www.standard.co.uk/news/world/burglar-who-injured-genitals-during-shop-break-in-sues-shopkeeper-a3736971.html) in the process, and so sues the people he was trying to rip off. Something similar happened after 9/11. America was attacked. In response, the U.S., UK, and coalition forces detained and questioned terror suspects. The United States sent 779 to Guantanamo Bay. But it was the U.S. and UK who ended up in the dock, with the terror suspects as the accusers.

Reverse Advocacy: There’s no constitutional or legal problem with Guantanamo and we shouldn’t change anything

Steven Groves & Brian Walsh 2007. ([Steven Groves](https://www.heritage.org/about/staff/stevengroves.cfm) is Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies. [Brian W. Walsh](https://www.heritage.org/about/staff/BrianWalsh.cfm) is Senior Legal Research Fellow in the Center for Legal and Judicial Studies, at The Heritage Foundation ) Dispelling Misconceptions: Guantanamo Bay Detainee Procedures Exceed the Requirements of the U.S. Constitution, U.S. Law, and Customary International Law 13 July 2007 <https://www.heritage.org/defense/report/dispelling-misconceptions-guantanamo-bay-detainee-proceduresexceed-the-requirements>

Congress should not interfere with the U.S. military's policy of detaining alien enemy combatants at Guantanamo Bay for the duration of the war on terrorism. These detainees should not be released until the cessation of hostilities in Afghanistan and elsewhere or until such time that the detainees are no longer a threat to U.S. and Coalition forces. Calls by Members of Congress and the "international legal and human rights community" to release the approximately 380 detainees remaining in Guantanamo are reckless in the extreme and not supported by the U.S. Constitution, U.S. laws, the Geneva Conventions, or customary international law.

3. Insignificant issue

Only 40 terrorists remain at Guantanamo (and they belong there)

Hans von Spakovsky 2018 (Election Law Reform Initiative and Senior Legal Fellow at Heritage Foundation) 18 July 2018 “Trump Wisely Keeping ‘Really Bad Dudes’ in Guantanamo Bay“ https://www.heritage.org/terrorism/commentary/trump-wisely-keeping-really-bad-dudes-guantanamo-bay

Today, only 40 terrorists remain at Gitmo. But they are considered the worst of the worst or, in the words of President Trump, “really bad dudes.” That is why we should all appreciate that Trump has kept his campaign promise to do the opposite of what President Barack Obama wanted to do: keep Guantanamo Bay open to detain these very dangerous terrorists.

4. No “recruiting tool” problem

Guantanamo is not a significant propaganda tool to recruit new terrorists

Cody M. Poplin and Sebastian Brady 2015. (Poplin - student at Yale Law School. Prior to law school, Cody worked at the Brookings Institution. Brady - was a National Security Intern at the Brookings Institution. He graduated from the University of California, San Diego with a major in political science and a minor in philosophy ) 3 June 2015 Is Guantanamo Really a Major Recruiting Tool for Jihadists? <https://www.lawfareblog.com/guantanamo-really-major-recruiting-tool-jihadists>

Is the detention facility, in fact, a significant recruiting tool for the enemy? The answer, it turns out, is complicated. Yes, Guantanamo shows up repeatedly in jihadist propaganda. But it has grown far less salient over the last few years, playing a much bigger role in the words of Al Qaeda and AQAP a few years ago than it does now—and playing a far lesser role in the propaganda of ISIS than it does in that of older terrorist groups. What’s more, Guantanamo has never played a big role in any terrorist group’s propaganda compared to the issues that really animate those groups. So while it’s easy to find examples of terrorist leaders mentioning and denouncing Guantanamo, these were never the major themes of jihadi propaganda but were, at most, supporting arguments.

5. Cost of Guantanamo is insignificant

Cost of Guantanamo is trivial

Benjamin Wittes 2015 (editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution) 21 Jan 2015 “The Arguments About Guantanamo are Nearly All Wrong, Disingenuous, Irrelevant, or Just Plain Dumb” https://www.lawfareblog.com/arguments-about-guantanamo-are-nearly-all-wrong-disingenuous-irrelevant-or-just-plain-dumb

Most recently, we have been hearing how expensive the facility is, as though the human rights movement is traditionally animated by fiscal matters. It's true, but the marginal cost of Guantanamo is a rounding error on a rounding error. And more importantly, money is not why anyone opposes the site. When was the last time you heard anyone say, "I really think the optimal location for U.S. detention operations is Guantanamo Bay, but I favor closing it because of the cost"? I haven't either.

Details: Guantanamo prisoners cost $380 million / year

Sacha Pfeiffer 2019 (journalist with National Public Radio) 11 Sept 2019 “Guantánamo Has Cost Billions; Whistleblower Alleges 'Gross' Waste” https://www.npr.org/2019/09/11/759523615/guant-namo-court-and-prison-have-cost-billions-whistleblower-alleges-gross-waste

The U.S. military court and prison at Guantánamo Bay, Cuba, have cost more than $6 billion to operate since opening nearly 18 years ago and still churn through more than $380 million a year despite housing only 40 prisoners today.

Comparison: The 2019 federal budget spent $4.4 trillion

Kimberly Amadeo 2020. ( U.S. Economy Expert for The Balance; has more than 20 years of senior-level corporate experience in economic analysis and business strategy, and received an M.S. in Management from the Sloan School of Business at M.I.T) 29 June 2020 FY 2019 Federal Budget: Trump’s Budget Request https://www.thebalance.com/fy-2019-federal-budget-summary-of-revenue-and-spending-4589082

The [fiscal year](https://www.thebalance.com/fiscal-year-definition-federal-budget-examples-3305794) 2019 federal budget outlines U.S. government revenue and spending from October 1, 2018, through September 30, 2019. The Office of Management and Budget reported that revenue was $3.464 trillion. ﻿ That's less than the spending of $4.448 trillion.

Do the math: $380 million divided by $4.448 trillion = 0.0085% of the budget

You aren’t going to balance the budget on that. No taxpayer would ever notice if this were cut to zero or doubled. And it’s not worth an hour and a half of our debate time when we could have been debating things that had real impact.

SOLVENCY

1. No “propaganda”/”recruiting” benefit to closing Guantanamo

**[Some Affirmative cases may argue that Guantanamo makes the US look bad, and terrorists use that as propaganda to justify their hatred of the USA and recruit new members, and therefore closing it would help the US image.]**

“Guantanamo” isn’t a big propaganda issue for terror groups and closing it wouldn’t bring any benefit

Cody M. Poplin and Sebastian Brady 2015. (Poplin - student at Yale Law School. Prior to law school, Cody worked at the Brookings Institution. Brady - was a National Security Intern at the Brookings Institution. He graduated from the University of California, San Diego with a major in political science and a minor in philosophy ) 3 June 2015 Is Guantanamo Really a Major Recruiting Tool for Jihadists? <https://www.lawfareblog.com/guantanamo-really-major-recruiting-tool-jihadists>

Indeed, other issues and grievances seemingly receive much more airtime and emphasis than the detention camp does; and Guantanamo, when mentioned, is often lumped in with other controversial facilities—like Bagram and Abu Ghraib. Detention and abuse of suspected terrorists by the United States, in other words, is a readily discernable motif. But the contemporary propaganda narrative seems to treat that motif as but one category of offenses in a long chain of western transgressions against the Muslim world. Accordingly, it is hardly clear that Guantanamo’s closure would matter much, so far as concerns the contents of jihadist propaganda. U.S. detention operations at Bagram and Abu Ghraib, after all, are now in the past—but that hasn’t persuaded jihadis to drop their invocations of both prisons in their online literature.

Issue is exaggerated and we can never solve it anyway

Benjamin Wittes 2015 (editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution) 21 Jan 2015 “The Arguments About Guantanamo are Nearly All Wrong, Disingenuous, Irrelevant, or Just Plain Dumb” https://www.lawfareblog.com/arguments-about-guantanamo-are-nearly-all-wrong-disingenuous-irrelevant-or-just-plain-dumb

We hear that Guantanamo is a recruitment tool for the enemy---a notion [the administration has long oversold](https://www.lawfareblog.com/dan-byman-guantanamo-recruitment-tool). To whatever extent it's true, it will be just as true of Guantanamo's successor. And more broadly, U.S. policy in a thousand areas is a recruiting tool of an enemy that hates the United States.

2. No better solutions

Either you have the same detentions somewhere else besides Guantanamo (doesn’t solve) or else admit that you want to let hard-core terrorists out on the street

Benjamin Wittes 2015 (editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution) 21 Jan 2015 “The Arguments About Guantanamo are Nearly All Wrong, Disingenuous, Irrelevant, or Just Plain Dumb” https://www.lawfareblog.com/arguments-about-guantanamo-are-nearly-all-wrong-disingenuous-irrelevant-or-just-plain-dumb

We hear that it's against our values, that it's "not who we are." But the proponents of this view---including President Obama---propose to continue law of war detentions somewhere else, meaning that it is who we are. And the proponents of this view who actually mean it---like the human rights groups---are never quite prepared to say what they really mean: that they favor releasing Abu Zubaydah and Hambali and the other hardest-core terrorists at the site against whom no criminal charges have yet materialized.

DISADVANTAGES

1. Recidivism (repeat offenders) = more terrorism

Link: 30% of released detainees from Guantanamo go back to do more terrorism

Hans von Spakovsky 2018 (Election Law Reform Initiative and Senior Legal Fellow at Heritage Foundation) 18 July 2018 “Trump Wisely Keeping ‘Really Bad Dudes’ in Guantanamo Bay“ https://www.heritage.org/terrorism/commentary/trump-wisely-keeping-really-bad-dudes-guantanamo-bay

Every six months the Director of National Intelligence must report, by law, how many terrorists formerly detained at Guantanamo Bay have resumed terrorist activities. The [last report](https://www.dni.gov/files/documents/Newsroom/GTMO_Reengagement_Summary_CDA_-Response.pdf)pegged the recidivism rate at 30.1 percent —124 confirmed as once again engaged in terrorism, 96 suspected of it.

Impact: Death & Destruction. “NOT” closing Guantanamo is the right policy to save innocent lives

Hans von Spakovsky 2018 (Election Law Reform Initiative and Senior Legal Fellow at Heritage Foundation) 18 July 2018 “Trump Wisely Keeping ‘Really Bad Dudes’ in Guantanamo Bay“ (brackets added) https://www.heritage.org/terrorism/commentary/trump-wisely-keeping-really-bad-dudes-guantanamo-bay

Trump signed an [executive order](https://www.whitehouse.gov/presidential-actions/presidential-executive-order-protecting-america-lawful-detention-terrorists/)to that effect on Jan. 30, 2018, reversing an Obama executive order issued in 2009 that tried to close the military prison. Tragically, at least 220 of their released comrades in arms (that we know of) have resumed their former “really bad” activities. And keep in mind that the DNI [Director of National Intelligence] has a very high standard for this report: It does not consider a Gitmo grad as a “confirmed” recidivist unless there is a “preponderance of evidence” or “reliable, verified, or well-corroborated intelligence reporting” that identifies a former Gitmo prisoner as directly involved in terrorism. These recidivists include [terrorists](https://armedservices.house.gov/sites/republicans.armedservices.house.gov/themes/rep_armed_services/largedocs/leaving_guantanamo_web_3_27.pdf) like Abdallah Saleh Ali Al-Ajmi, who was transferred by the Bush administration from Gitmo to Kuwait, which then released him. He subsequently drove a truck filled with 5,000 to 10,000 pounds of explosives onto an Iraqi army base, killing 13 soldiers and wounding 42 others in a 2008 suicide attack.
**END QUOTE. HE GOES ON LATER IN THE ARTICLE SAYING QUOTE:**
We will never know with exactitude just how many additional acts of terrorism they will commit and how many more innocents they will kill. But we will know one thing for sure: None of those new acts of terrorism would have happened if those detainees had remained in Guantanamo Bay.

2. Glorifying the bad guys

Affirmative’s extra concern for the terrorists allows them to propagandize and waste time and money on false claims

Robin Simcox 2019. (specializes in terrorism and national security analysis as the Margaret Thatcher Fellow at the Heritage Foundation) The Terrorist As Litigant 16 Sept 2019 https://www.heritage.org/terrorism/commentary/the-terrorist-litigant

One issue is the terror suspect, once captured, seeing the legal process as yet another opportunity to propagandize. Some suspects use the legal system and their lawyers to maximum effect. In the UK, one law firm, acting on the word of their client, [pursued](https://www.dailymail.co.uk/news/article-3740538/His-firm-s-shut-soldiers-planning-SUE-him.html) British troops for alleged war crimes in Iraq so grave that a public inquiry was announced. After five years and tens of millions of pounds spent, the [allegations](https://www.telegraph.co.uk/news/uknews/defence/11298603/Al-Sweady-inquiry-clears-British-soldiers-of-murder-and-torture-claims.html) were found to be “wholly and entirely without merit or justification,” the result of “deliberate and calculated lies.”

Listening to the false claims of the terrorists glorifies them and dooms democracy

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You end up in a situation in which intelligence services are depicted as villainous liars and terror suspects lionized as fearless truth-tellers. Or in which an ex-CIA director is [harangued](https://www.youtube.com/watch?v=DIbl28O99Lg) on a college campus (as happened in New York) or in which students vote to [ban](https://www.telegraph.co.uk/news/uknews/1581106/Students-vote-to-ban-military-from-campus.html) the military from recruiting on campus (as happened in London), while former Guantanamo detainees are sought after by some of these same institutions to educate their students. A healthy democracy cannot behave in that way and hope to survive.

3. Judicial Intervention Harms the Military

Link: The Affirmative uses federal court cases and judicial rulings to tell the military what to do

It’s in their plan.

Link: Courts are not competent to manage military affairs. That’s why the Constitution didn’t let them do it

Edwin Meese III and Charles D. Stimson 2018 (Meese is Ronald Reagan Distinguished Fellow Emeritus in the Edwin Meese III Center for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation and 75th Attorney General of the United States. Charles D. Stimson is Manager of the National Security Law Program and a Senior Legal Fellow in the Meese Center) 24 Sept 2018 “The Supreme Court Goes to War”  https://www.heritage.org/courts/report/the-supreme-court-goes-war

The Court (as have some lower courts) has drifted away from its proper role in national security cases. Ignoring historical facts and original public meaning, the Court instead has substituted its preferred policy outcomes as guides for decision, often with little or no regard for their practical implications for our warfighters. In doing so, it has trampled on the plain meaning of statutes and the Constitution and assumed powers that are properly placed within either the executive branch or the legislative branch. This is fundamentally inconsistent with the original design of the Founders. The Court’s decisions are directly applicable to uniformed officers in the Judge Advocate General’s Corps (JAGS) in the exercise of their professional duties. Senior JAGs are on the front lines of our war effort and nation’s defense, advising commanders on what the Court has said, or might say, in a myriad of circumstances. They don’t have the luxury of time to make decisions, because ever-changing real-world events and battlefield questions require answers, answers that come from the written word, from case law, from statutes, as well as directives, regulations, and field manuals that stem directly from that law.

Impact: Danger to US military personnel increases when they have to worry about litigation over military detention

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The consequences of these decisions affecting national security are very real. They have a direct impact on the advice that military lawyers give commanders and, potentially, on the outcome of the conflict involved. Gone are the days when United States armed forces could capture and hold a member of the opposing enemy force and not think about litigation. Naturally, we cannot deny quarter to the enemy who is *hors de combat* [off the battlefield, surrendered], but now one also has to worry about what evidence to collect in the midst of war to justify military detention. When judges are able to second-guess good-faith decisions made in the handling of prisoners taken in combat, or change the rules of war, those fighting the enemy are plunged into new sources of jeopardy. Military attorneys exercise extraordinary care when providing rules of engagement and operational advice to those making decisions at the various levels of battle. They may be frontline infantrymen, aircraft pilots, drone operators, or generals commanding theaters of war, but increasingly, there is in the back of their minds the potential threat of litigation. The imminent dangers inherent in combat operations are now compounded by the specter of legal jeopardy when the battle has ended.